



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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April 3, 2014

Dr. Roy E. Crabtree
Regional Administrator
Southeast Regional Office
National Oceanic and Atmospheric Administration
263 13th Avenue South
St. Petersburg, Florida 33701

Subject: EPA NEPA Comments on NOAA Draft Supplement to the Final Environmental Impact Statement for the Marine Aquaculture Fishery Management Plan; Gulf of Mexico EEZ; CEQ No. 20140038

Dear Dr. Crabtree:

Consistent with our responsibilities under Section 102(2)(C) of the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act, the U.S. Environmental Protection Agency (EPA) has reviewed the National Oceanic and Atmospheric Administration's (NOAA) Draft Supplement to the Final Environmental Impact Statement (DSFEIS) for the referenced Fishery Management Plan (FMP) for offshore marine aquaculture (Aquaculture FMP). The DSFEIS was prepared in order to consider new baseline conditions in the Gulf of Mexico (GOM) and information related to the Deepwater Horizon (DWH) oil spill event. This document also provides additional analysis of management alternatives identified in the 2009 Aquaculture FMP in relation to potential changes in baseline conditions in the GOM.

Prior to the implementation of the Aquaculture FMP, there was no dedicated permitting and regulatory process for marine aquaculture operations. Since aquaculture is considered a form of "fishing" under the Magnuson Stevens Fishery Conservation Management Act (MSA) NOAA (NMFS) needed a process to regulate this type of fishing. The Aquaculture FMP provides regional regulations for promoting and managing prospective marine aquaculture that is environmentally sound and economically sustainable in the federal waters of the Gulf of Mexico Exclusive Economic Zone (Gulf EEZ), located 3-200 miles offshore.

The Aquaculture FMP established a regional permitting process in the Gulf for marine aquaculture operations through establishment of several management measures. These actions included measures to establish:

- 1) Aquaculture permit requirements, eligibility, and transferability;
- 2) Application requirements, operational requirements, and restrictions;

- 3) Duration of the permit;
- 4) Species allowed for aquaculture and included in the aquaculture fishery management unit;
- 5) Allowable marine aquaculture systems;
- 6) Marine aquaculture siting requirements and conditions;
- 7) Restricted access zones for marine aquaculture facilities;
- 8) Recordkeeping and reporting;
- 9) Biological reference points and status determination criteria.
- 10) Framework procedures

EPA's Regulatory Role

EPA's role for marine aquaculture operations in the Gulf EEZ is clearly defined. For these federal waters, EPA has statutory authority to administer NPDES permits and has determined that net pens constitute "concentrated aquatic animal production" facilities under the CWA and are thus subject to permit requirements. EPA has also determined that the Ocean Disposal Criteria of CWA § 403(c) applies, thus mandating an environmental effects review of discharges resulting from aquaculture projects. In addition, EPA has a role in registering and regulating pesticides that may be used at the facility and also designates (together with the COE) Ocean Dredged Material Disposal Sites (ODMDSs) in state or federal waters under the Marine Protection, Research and Sanctuaries Act (MPRSA) of 1972.

EPA Comments

- Since the 2009 Aquaculture FMP EPA has issued a handful of NPDES permits for proposed aquaculture operations in the GOM. It is our understanding that most of these aquaculture pens are not fully operational in the GOM. EPA notes that information related to the status of these permitted operations through the NMFS aquaculture permitting process is not discussed in the DSFEIS. EPA recommends additional discussion be added to the FSFEIS regarding permits that have been issued and the status of these operations in the GOM.
- One of the primary conclusions of this document is that "[t]he data obtained to support the conclusions within this draft SFPEIS indicate that although the environmental baseline could have been altered by the DWH blowout, impacts to the physical, environmental, and socioeconomic resources are not expected to substantially change from that described in the Aquaculture FMP/FPEIS."¹ EPA understands that the long-term ecological/water quality impacts of the DWH oil spill are unclear at this time and may take years or decades to determine. EPA request that NOAA (NMFS) to provide EPA with relevant data and information relating to baseline condition changes in the GOM (specifically studies generated by NOAA) that may impact our above referenced regulatory roles relating to the permitting of marine aquaculture operations.

¹ p. 11 of the DSFEIS

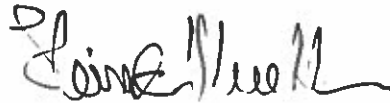
- EPA notes that most of the actions under the Aquaculture FMP/FPEIS remain unchanged in the DSFEIS. EPA recommends the inclusion of a summary table of all the actions and any changes proposed under the FSFEIS. Minor changes such as potential changes in aquaculture pen siting criteria and biological reference points could be highlighted in this summary table.

EPA DSFEIS Rating

Although some clarification comments are offered for this DSFEIS, EPA generally supports NOAA and the NMFS on this DSFEIS and the Aquaculture FMP and gives deference to your fishery expertise. Therefore, EPA rates this DSFEIS as "LO" (Lack of Objections). Nevertheless, we request that NOAA and the NMFS directly respond to our comments in a dedicated section of the FSFEIS.

We appreciate the opportunity to review the DSFEIS. Should you have questions regarding these comments, feel free to contact Dan Holliman of my staff at 404/562-9531 or holliman.daniel@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Heinz Mueller", with a stylized flourish at the end.

Heinz J. Mueller, Chief
NEPA Program Office